

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DONALD M. WILLIAMS,

Plaintiff,

v.

**JO ANNE B. BARNHART,
Commissioner of Social Security,**

Defendant.

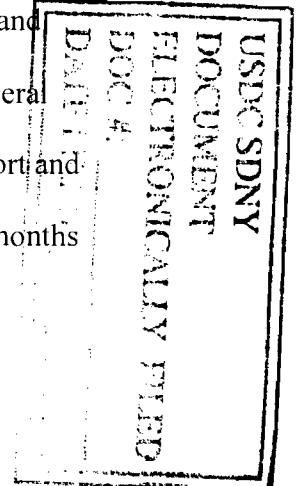
06 Civ. 2495 (SCR)

**MEMORANDUM ORDER
ADOPTING REPORT AND
RECOMMENDATION**

STEPHEN C. ROBINSON, United States District Judge:

Donald M. Williams brings this case under 42 U.S.C. § 405(g) seeking judicial review of the final decision of the Commissioner of Social Security, which found that Williams was not entitled to disability insurance benefits or Supplemental Security Income under the Social Security Act. On November 16, 2006, Commissioner Barnhart moved for a judgment on the pleadings and dismissal of the Complaint. On May 18, 2007, Williams cross-moved for a judgment on the pleadings under Rule 12(c) of the Federal Rules of Civil Procedure. This case was referred to Magistrate Judge Mark D. Fox for the issuance of a Report and Recommendation regarding both motions.

Judge Fox issued the Report and Recommendation on May 5, 2008, advising this Court to grant the Commissioner's motion to dismiss and deny Williams' motion for judgment on the pleadings. As Judge Fox explicitly noted at the end of the Report and Recommendation, under 28 U.S.C. § 636(b)(1) and Rules 72(b) and 6(d) of the Federal Rule of Civil Procedure, the parties had a right to file written objections to the Report and Recommendation within thirteen working days from May 5, 2008. More than six months



have elapsed since Judge Fox issued his Report and Recommendation, and the parties have not filed objections.

I. STANDARD OF REVIEW

In reviewing a Report and Recommendation, a district court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C § 636(b)(1). To accept a Report and Recommendation to which no timely objection has been made, a district court need only satisfy itself that “there is no clear error on the face of the record.” *Nelson v. Smith*, 618 F. Supp. 1186, 1189 (S.D.N.Y. 1985) (citations omitted); *accord Edwards v. Fischer*, 414 F. Supp. 2d 342, 346-47 (S.D.N.Y. 2006). *See also Pizarro v. Bartlett*, 776 F. Supp. 815, 817 (S.D.N.Y. 1991) (court may accept report if it is “not facially erroneous”). As neither party has objected to Judge Fox’s Report and Recommendation, this Court will review the Report and Recommendation for clear error.

II. DISCUSSION

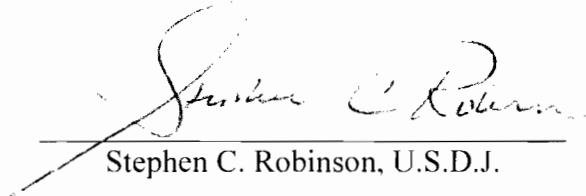
This Court has reviewed Judge Fox’s comprehensive and well-reasoned Report and Recommendation and has determined that there is no clear legal error on the face of the record. Accordingly, the Court accepts Judge Fox’s Report and Recommendation in its entirety, denies Williams’ motion under Rule 12(c), and grants the Commissioner’s motion to dismiss the Complaint. The Court agrees with Judge Fox’s conclusion that, under the circumstances of this case, the Commissioner applied the correct legal standard and the Commissioner’s determination that Williams was not disabled and could perform sedentary work was supported by substantial evidence in the record. *See Acierno v.*

Barnhart, 475 F.3d 77, 80-81 (2d Cir. 2007). The Clerk of the Court is directed to close this case and terminate docket entries 5 and 12.

It is so ordered.

Dated: White Plains, New York

November 20, 2008



Stephen C. Robinson

Stephen C. Robinson, U.S.D.J.